

## **ARGUMENTS/REMARKS**

Claims 1 through 20 are pending in the present application. Claims 1 and 15 have been amended for purposes of clarity.

In the Office Action, the drawings were objected to under 37 CFR 1.83(a) as not showing every feature of the invention specified in the claims. Accordingly, new Fig. 7 has been added to the drawings that shows the originally claimed subject matter of claim 19. The new Fig. 7 finds support in the originally filed claim 19 and no new matter has been added. Reconsideration and withdrawal of this objection are respectfully requested.

The Office Action also indicated that Figs. 3 through 6 were not clear and that the reference numerals could not be clearly seen. Accordingly, Figs. 3 through 6 were re-drafted to more clearly show the claimed invention. No new matter has been added.

In the Office Action, claims 1 through 20, specifically claims 1 and 15 were objected to as being unclear. The Office Action indicates that the whether or not the fastener is being claimed in combination with a brassiere with shoulder straps or just the fastener itself is being claimed. Appropriate correction has been made.

The Office Action indicated that the first four entries of the IDS submitted on 2.2.05 were incorrect. These first four entries were not identified as design patents. Accordingly, a new IDS with the correct design patent numbers is submitted along with this response.

In the Office Action, claims 1 through 5, 7 through 12, 15 through 17 and 20 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Design Patent No. D246,704 to Ophir (hereinafter "the Ophir design patent"). Applicant respectfully disagrees.

Claim 1 is directed to a fastener for connecting a back panel and a shoulder strap of a brassiere having a first arm for engagement with the shoulder strap, and a second arm connected to and at an angle with respect to the first arm, for engagement with a portion of the back panel, wherein the fastener creates an angle between said shoulder strap and the portion of the back panel and biases the portion of the back panel downward toward a spine of a wearer.

The Ophir design patent is directed to a hollow heart shaped fastener with curved sides having a loop on one of the sides and a hook on the other side.

The Office Action states that "when used in a brassiere as a shoulder strap fastener the Ophir fastener functions as claimed and as outlined in the intended use recitation. The intended use recitation has not been given patentable weight since the claimed structure does not distinguish the claimed invention over the prior art fastener satisfying the same structural limitations." (page 4).

Applicant does not agree with these conclusions. The sides of the fastener of the Ophir design patent are curved. The second arm not is connected at an angle with respect to the first arm, but is simply connected to the first arm. Therefore, the prior art fastener does not satisfy the same structural limitations of the claimed structure of having a second arm connected at an angle with respect to the first arm. Further, the curved arms of the first and second side of the heart shaped fastener of the Ophir design patent are not inherently structured to create an angle between the shoulder strap and the back panel that biases a portion of the back panel downward toward a spine of the wearer. In contrast, the portion of the back panel would be oriented directly across the back of the wearer. Accordingly, the Ophir design patent does not anticipate claim 1. Reconsideration and withdrawal of the 35 U.S.C. 102(b) rejection are respectfully requested.

Claims 2, 3 and 8 through 10 all depend from independent claim 1 and are also not anticipated by the Ophir design patent for the same reasons set for the above with respect to claim 1. Accordingly, withdrawal and reconsideration of the 35 U.S.C. 102(b) rejection are respectfully requested.

Dependent claim 4 depends from dependent claim 2 and provides that the wave portion has a flange. Figures 1 through 3 of the Ophir design patent do not show that the wave portion has a flange. The two curved sides of the fastener meet at a plane and connect. Accordingly, withdrawal and reconsideration of the rejection are respectfully requested.

Dependent claim 5 depends from claim 4, and provides that the flange has a pair of tapered sides. As discussed above, the heart shaped fastener of the Ophir design patent does not have a flange. Accordingly, withdrawal and reconsideration of the rejection are respectfully requested.

Dependent claim 6 depends from claim 5, and provides that the pair of tapered sides are parallel to the first arm and the second arm. As discussed above, the heart shaped fastener of the Ophir design patent does not have a flange or any flange having a pair of tapered sides parallel to the first arm and the second arm. Accordingly, withdrawal and reconsideration of the rejection are respectfully requested.

Dependent claim 7 depends from dependent claim 4, and provides that the first arm, said second arm, and said wave portion form a heart shape. As discussed above with respect to claim 4, the heart shaped fastener of the Ophir design patent does not have a flange or any flange having a pair of tapered sides parallel to the first arm and the second arm. Accordingly, withdrawal and reconsideration of the rejection are respectfully requested.

Dependent claim 11 depends from claim 1, and provides that the angle is about 24 to about 45 degrees. As discussed above, with respect to claim 1, the curved first arm and the curved second arm do not form any angle. Accordingly, withdrawal and reconsideration of the rejection are respectfully requested.

Dependent claim 12 depends from claim 1, and provides that the angle is about 27 to about 41 degrees. As discussed above, with respect to claim 1, the curved first arm and the curved second arm do not form any angle. Accordingly, withdrawal and reconsideration of the rejection are respectfully requested.

Independent claim 15 is directed to a fastener for connecting a back panel and a shoulder strap of a brassiere having a first arm for engagement with the shoulder strap. The first arm has a first end and a second end. The fastener has a second arm for engagement with the back panel and the second arm has a first end and a second end. The first end of the second arm is connected to the first end of the first arm to form a plane and the second end of the second arm forms an angle with respect to the second end of the first arm. The fastener has a wave portion wherein the fastener biases a portion of the back panel and the shoulder strap towards each other.

Dependent claim 16 depends from independent claim 15 and provides that the wave portion has a flange. Figures 1 through 3 of the Ophir design patent do not show that the wave portion has a flange. The two curved sides of the fastener meet at a plane and connect. Accordingly, withdrawal and reconsideration of the rejection are respectfully requested.

Dependent claim 17 depends from dependent claim 16, and provides that the flange has a pair of tapered sides. As discussed above, the heart shaped fastener of the Ophir design patent does not have a flange. Accordingly, withdrawal and reconsideration of the rejection are respectfully requested.

Dependent claim 20 depends from independent claim 15, and provides that the angle is about 24 to about 45 degrees. As discussed above, the curved first arm and the curved second arm do not form any angle. Accordingly, withdrawal and reconsideration of the rejection are respectfully requested.

In the Office Action, claims 1 through 20 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 348,871 to Wales (hereinafter "the Wales patent"). Applicant respectfully disagrees.

As discussed above, claim 1 is directed to a fastener for connecting a back panel and a shoulder strap of a brassiere having a first arm for engagement with the shoulder strap; and a second arm connected to and at an angle with respect to the first arm, for engagement with a portion of the back panel, wherein the fastener creates an angle between said shoulder strap and the portion of the back panel and biases the portion of the back panel downward toward a spine of a wearer.

The Wales patent is directed to a connection for belts, bands garters, sleeve supporters and stockings.

The Office Action states that "when used to attach a shoulder strap to a brassiere [the fastener] would create the biased orientation (due to the angled arms) in relation to the body of the brassiere as claimed. However, the intended use recitations have not been given patentable weight since they do not further distinguish the structure of the inventive fastener over the prior art satisfying the same structural limitations." (page 4). Applicant does not agree with this conclusion.

The Office Action has not identified with clarity the components of the article of Fig. 8 that are deemed to correspond to the elements of the claimed invention.

The sides of the connection of the Wales patent converge to form a “V-shaped” narrow opening. The sides of the connection are not inherently structured to allow the passage of a shoulder strap and a portion of a back panel between the angle that they create. Therefore, sides of the connection of the patent are not inherently structured to create an angle between the shoulder strap and the back panel that biases a portion of the back panel downward toward a spine of the wearer. Accordingly, the Wales patent does not anticipate claim 1. Reconsideration and withdrawal of the 35 U.S.C. 102(b) rejection are respectfully requested.

Dependent claims 2, 3, 4, 5, 8 through 12 depend from claim 1, and are also not anticipated by the Wales patent for the same reasons discussed above with respect to claim 1.

Dependent claim 6 depends from dependent claim 5 and provides that the pair of tapered sides are parallel to the first arm and the second arm. The Wales patent has a pair of tapered sides; however, those sides are not parallel to a first arm or a second arm of the connection. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Dependent claim 7 depends from claim 4, and provides that the first arm, the second arm, and the wave portion form a heart shape. The connection of the Wales patent does not form a heart shape. In contrast the first arm, the second arm and the wave portion form a triangular shape. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Dependent claim 13 depends from independent claim 1 and provides that the shoulder strap and the back panel are biased toward each other. As discussed above with respect to claim 1, the structure of the connection of the Wales patent does not allow the passage of a shoulder strap or a portion of a

back panel to fit within the connection. Accordingly, the shoulder strap and a portion of a back panel could not be biased toward each other.

Dependent claim 14 depends from independent claim 1 and provides that the shoulder strap and the back panel are biased away from each other. As discussed above with respect to claim 1, the structure of the connection of the Wales patent does not allow the passage of a shoulder strap or a portion of a back panel to fit within the connection. Accordingly, the shoulder strap and a portion of a back panel could not be biased away from each other.

Independent claim 15 is directed to a fastener for connecting a back panel and a shoulder strap of a brassiere having a first arm for engagement with the shoulder strap. The first arm has a first end and a second end. The fastener has a second arm for engagement with the back panel and the second arm has a first end and a second end. The first end of the second arm is connected to the first end of the first arm to form a plane and the second end of the second arm forms an angle with respect to the second end of the first arm. The fastener has a wave portion wherein the fastener biases a portion of the back panel towards the shoulder strap towards each other.

As discussed above with respect to claim 1, the sides of the connection in the Wales patent converge to form and a "V-shaped" narrow opening. The sides of the connection are not inherently structured to allow the passage of a shoulder strap and a portion of a back panel between the angle that they create. Therefore, sides of the connection of the patent are not inherently structured to bias a portion of the back panel towards the shoulder strap. Accordingly, the Wales patent does not anticipate claim 15. Reconsideration and withdrawal of the 35 U.S.C. 102(b) rejection are respectfully requested.

Dependent claim 16, 17 and 20 depend from independent claim 15 and are also not allowable for the same reasons. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Dependent claim 18 depends from dependent claim 15 and provides that the pair of tapered sides are parallel to the first arm and the second arm. The Wales patent has a pair of tapered sides; however, those sides are not parallel to a first arm or a second arm of the connection. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Dependent claim 19 depends from independent claim 15 and provides that one of the first and second arms is angled with respect to the plane, while the other of the first and second arms is parallel to the plane.

The Office Action references Fig. 6 as showing such a configuration. Applicants respectfully disagree. The connection of Fig. 6 arguably has one arm; however, it does not have a second arm. Instead the connection of Fig. 6 has a series of apertures that hold the cord in the shown configuration. The connection is not structured to have one of the first and second arms that is angled with respect to the plane, while the other of the first and second arms is parallel to the plane, as claimed. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ophir in view of U.S. Patent No. 3,699,971 to Hittel et al. (hereinafter "the Hittel et al. patent") Applicant respectfully disagrees.

As discussed above, the Ophir design patent is directed to a hollow heart shaped fastener with curved sides having a loop on one of the sides and a hook on the other side.



The Hittel et al. patent is directed to a brassiere providing support and self-adjustment having strap buckles 44.

The Office Action states that “Ophir discloses the invention substantially as claimed. However, that Ophir does not disclose the fastener as specifically being placed on a shoulder strap of a brassiere to connect the shoulder strap to the brassiere panel.” (page 5)

The Office Action further states that :

[T]he Hittel et al. discloses a fastener clasp 44 to attach a shoulder strap to a brassiere panel. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the fastener of Ophir within a brassiere to connect a brassiere shoulder strap to a brassiere in the front or the rear and wherein such use would create an angled connection and position of the shoulder strap that would be inherently caused by the angled arms which hold the strap ends. (page 5)

Applicant respectfully disagrees with these statements. Applicant does not agree with the assertion that the Ophir design patent discloses the invention substantially as claimed, in view of the arguments presented.

There is no motivation to modify the Ophir design patent with the Hittel et al. patent. First, the aesthetics of the Ophir design patent suggest that the fastener is not to be used with a brassiere because the decorative shape would be entirely obstructed by the ends of the shoulder strap and the portion of the back panel that could be connected. Additionally, the decorative appendages of the hook and the loop that extend from opposite sides of the fastener would also be entirely obstructed from view.

The fastener of the Ophir design patent actually appears not to function with any sort of brassiere, but with another type of garment to which it would actually be hooked as evidenced by its hook member connected to one of the curved sides of the heart shape.

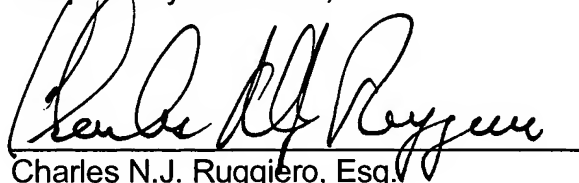
Further, the heart shape of the fastener of the Ophir design patent would create a right angle between any straps to which it was connected. This arrangement would not make the brassiere function properly during wear, whether or not the fastener were used at the front or the back of brassiere.

The Hittel et al. patent with which the Ophir design patent is combined does not correct the deficiencies of the Ophir design patent. In contrast, the Hittel et al. patent only shows a conventional brassiere having conventional buckles 44 that allow the shoulder straps 18, 20 to be lengthened. The buckles 44 are rectangularly shaped. At the location that they are each connect to the tops of the respective breast cups, they do not create any relative angle between the respective straps or cups. One of ordinary skill in the art would not have made the combination suggested by the Office Action. Withdrawal and reconsideration of the 35 U.S.C. 103(a) rejection are respectfully requested.

In view of the foregoing, Applicant respectfully submits that all claims presented in this application patentably distinguish over the cited prior art and the cited combinations of same. Accordingly, Applicant respectfully requests favorable consideration and that this application be passed to allowance.

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Respectfully submitted,



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**In the Drawings:**

Replacement Sheets are provided in the attached appendix to clarify the reference numerals in Figs. 3 through 6. New Fig. 7 has been added to show the originally claimed subject matter of claim 19. The New Sheet is provided in the attached appendix. No new matter has been added.